

EXHIBIT B

1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF FLORIDA

3 MIAMI DIVISION

4 -----x

5 DOMINIK KARNAS, et al., :

6 Plaintiffs, : Case No.

7 v. : 1:22-cv-22538-ALTMAN/REID

8 MARK CUBAN, et al., :

9 Defendants. :

10 -----x

11
12
13 Videotaped Deposition of

14 LEE REINERS

15 Conducted Virtually

16 Thursday, March 28, 2024

17 10:05 a.m. EST

18
19
20
21
22
23 Job No.: 530570

24 Pages: 1 - 136

25 Reported by: Nancy C. Bendish, CCR, RMR, CRR

1 securities laws. 10:13:21

2 My opinion is also that VGX shares 10:13:22

3 many of the characteristics of an investment 10:13:24

4 contract under the securities laws. 10:13:27

5 Q. Okay. Could you describe what you 10:13:29

6 mean by EPAs and VGX. 10:13:31

7 A. Yes. So, the Earn Program 10:13:35

8 Accounts were the interest-bearing accounts that 10:13:38

9 were offered by Voyager, and VGX is the native 10:13:41

10 token, otherwise known as an exchange token, 10:13:48

11 that was issued by Voyager. 10:13:52

12 Q. Okay. We can use those EPA and 10:13:55

13 VGX to refer to those today. 10:13:59

14 What did you do to prepare this 10:14:01

15 report, Exhibit 1? 10:14:04

16 MR. ZACK: Object to the form, if 10:14:08

17 it calls for any conversations between counsel, 10:14:10

18 any discussions between counsel in preparation 10:14:12

19 for the report. 10:14:15

20 Do not relate any conversations 10:14:21

21 you had with counsel, please. 10:14:23

22 Q. Go ahead, Mr. Reiners. 10:14:25

23 A. So, I reviewed the Second Amended 10:14:28

24 Complaint, the defendants' motion to dismiss, 10:14:32

25 the CFTC's complaint, the New Jersey Bureau of 10:14:38

Transcript of Lee Reiners
Conducted on March 28, 2024

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1	Securities cease and desist order against	10:14:44
2	Voyager, a number of other publically available	10:14:49
3	documents, and I had two prep sessions with my	10:14:50
4	counsel.	10:14:54
5	Q. Okay. Roughly when were you	10:14:55
6	retained in this matter?	10:14:57
7	A. I was asked to write this report	10:15:03
8	sometime at the end of February, I believe.	10:15:08
9	Q. And let the record reflect the	10:15:15
10	report is dated on the front page March 15th,	10:15:19
11	2024.	10:15:26
12	So, the things that you mentioned	10:15:27
13	as doing to prepare this report, you did that	10:15:29
14	between the end of February and March 15th; is	10:15:32
15	that right?	10:15:37
16	A. Correct.	10:15:38
17	Q. And did you review any of the	10:15:39
18	documents that were produced by either party in	10:15:41
19	this matter?	10:15:44
20	A. Can you be more specific?	10:15:49
21	Q. You mentioned reviewing two	10:15:50
22	complaints, the motion to dismiss, the cease and	10:15:53
23	desist order and other public documents.	10:16:01
24	I'll represent to you that parties	10:16:03
25	in this matter have made productions of	10:16:05

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1	confidential documents pursuant to discovery in	10:16:07
2	this matter. Did you review any of those	10:16:11
3	documents that were produced by any of the	10:16:13
4	parties?	10:16:15
5	A. No.	10:16:16
6	MR. ZACK: I object to the form of	10:16:17
7	the question.	10:16:18
8	A. No.	10:16:22
9	Q. Did you decide what documents you	10:16:23
10	wanted to review before preparing your report?	10:16:27
11	A. Yes.	10:16:31
12	Q. And how did you go about making	10:16:32
13	that decision?	10:16:34
14	A. I looked at the documents that I	10:16:37
15	thought were most informative as to the	10:16:40
16	substance of EPAs and VGX, and how they're	10:16:44
17	offered, sold, traded.	10:16:51
18	Q. And are there any documents that	10:16:54
19	you didn't review that you think are necessary	10:16:55
20	in order to support your report?	10:16:59
21	MR. ZACK: Object to the form.	10:17:01
22	A. No.	10:17:04
23	Q. So is it fair to say you believe	10:17:05
24	you've reviewed adequate documents in order to	10:17:07
25	support the opinion that you've written here?	10:17:11

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1 should be limited to an objection to one person 10:21:38
2 making those objections. That's my view. If 10:21:43
3 you want to ask the court, that's fine. But as 10:21:46
4 far as I'm concerned -- 10:21:50

5 MR. BEST: Let's see how it goes. 10:21:53

6 MR. ZACK: It's just a waste of 10:21:55
7 time. 10:21:56

8 MR. BEST: I agree it's a waste of 10:21:57
9 time, Steve. Let's see how it goes. If it 10:21:59
10 disrupts the deposition, if I think it disrupts 10:22:02
11 the deposition, or Dan does, we'll go to the 10:22:05
12 court. Let's just keep moving on. 10:22:07

13 MR. ZACK: I'm okay with that. 10:22:10
14 Any time we want to do either thing is fine with 10:22:12
15 us. 10:22:16

16 MR. BEST: Great. Sorry, Dan. 10:22:16

17 MR. SACHS: No worries. 10:22:19

18 BY MR. SACHS: 10:22:20

19 Q. Mr. Reiners, does your report 10:22:20
20 express an opinion as to whether the EPAs and 10:22:23
21 VGX are investment contracts? 10:22:26

22 A. My report says that they support 10:22:31
23 the elements of an investment contract, but I do 10:22:35
24 not believe anywhere in the report do I say 10:22:38
25 definitively that they are investment contracts. 10:22:41

1	report to be.	10:33:36
2	Does your report express an	10:33:37
3	opinion as to what constitutes a successful	10:33:39
4	solicitation under the law?	10:33:42
5	A. No.	10:33:46
6	Q. Does your report express an	10:33:47
7	opinion as to who is a statutory defendant under	10:33:49
8	the law?	10:33:54
9	A. No.	10:33:55
10	Q. Does your report express an	10:33:55
11	opinion as to whether defendants were agents who	10:33:56
12	materially aided in the sale of securities under	10:34:00
13	the law?	10:34:03
14	A. No.	10:34:04
15	Q. Does your report express an	10:34:04
16	opinion as to plaintiffs' relationship in this	10:34:06
17	case with the defendants?	10:34:10
18	A. No.	10:34:13
19	Q. Does your report express an	10:34:14
20	opinion as to any defenses in this case?	10:34:15
21	A. Yes.	10:34:25
22	Q. What does your report -- what	10:34:27
23	opinion does your report express as to defenses?	10:34:30
24	A. I believe in the report, I don't	10:34:35
25	know which section, I reference some of the	10:34:40

1 arguments that the defense made in their motion
2 to dismiss regarding EPAs.

3 Q. Okay. Apart from the arguments in
4 defendants' motion to dismiss, does your report
5 express an opinion as to any other defenses in
6 this matter?

7 MR. ZACK: Object to form.

8 A. No.

9 Q. Does your report express any
10 opinion as to damages in this matter?

11 A. No.

12 Q. Okay. Do you believe that your
13 report expresses an opinion as to the motion for
14 class certification?

15 A. I don't specifically address that
16 motion in my report.

17 Q. Okay. Is it fair to say your
18 report does not express an opinion as to whether
19 the issue of typicality has been met in this
20 case?

21 A. I don't address that issue in my
22 report.

23 Q. Does your report express an
24 opinion as to the issue of predominance under
25 Rule 23(b) in this case?

10:34:45

10:34:48

10:34:53

10:34:57

10:35:01

10:35:04

10:35:04

10:35:07

10:35:09

10:35:10

10:35:13

10:35:15

10:35:17

10:35:22

10:35:32

10:35:34

10:35:39

10:35:41

10:35:44

10:35:48

10:35:49

10:35:51

10:35:52

10:35:53

10:35:57

1	A.	Not to my knowledge, no.	10:35:59
2	Q.	Does your report express an	10:36:00
3		opinion as to the issue of superiority under	10:36:02
4		Rule 23(b) in this case?	10:36:06
5	A.	Not to my knowledge.	10:36:08
6	Q.	Does your report express an	10:36:09
7		opinion as to the issue of commonality under	10:36:10
8		Rule 23(a) in this case?	10:36:13
9	A.	Not to my knowledge.	10:36:15
10	Q.	Does your report express an	10:36:17
11		opinion as to the issue of issue certification	10:36:19
12		in this case?	10:36:22
13	A.	Not to my knowledge.	10:36:24
14	Q.	Does your report express an	10:36:25
15		opinion as to the issue of choice of law?	10:36:27
16	A.	No.	10:36:29
17	Q.	Does your report express an	10:36:30
18		opinion as to the issue of the class definition	10:36:33
19		in this case?	10:36:36
20	A.	Not to my knowledge, no.	10:36:38
21	Q.	Does your report express an	10:36:40
22		opinion as to the issue of ascertainability in	10:36:42
23		this case?	10:36:45
24	A.	Not to my knowledge.	10:36:46
25	Q.	Does your report express an	10:36:47

1 opinion as to the difference between the federal 10:36:49
2 and state securities laws on the issue of 10:36:51
3 unregistered securities? 10:36:53
4 A. Not to my knowledge. 10:36:57
5 Q. Does your report express an 10:36:59
6 opinion as to the tests that are applicable 10:37:01
7 under state law on the issue of unregistered 10:37:08
8 securities? 10:37:12
9 MR. ZACK: Object to form. 10:37:14
10 A. I believe at some point in the 10:37:20
11 report I do reference state law, specifically 10:37:22
12 New Jersey state law. I don't know if that 10:37:28
13 reference would go so far as to constitute an 10:37:30
14 opinion, though. 10:37:33
15 Q. Okay. Are you familiar with the 10:37:34
16 definition of an investment contract under state 10:37:46
17 law? 10:37:50
18 MR. ZACK: Object to form. 10:37:55
19 A. Well, I'm not going to know -- 10:37:58
20 MR. ZACK: Any state law? 10:38:00
21 MR. SACHS: Yes, any state law. 10:38:02
22 A. In New Jersey my understanding is 10:38:07
23 that the definition resembles the definition as 10:38:09
24 laid out by the Supreme Court in Howey. 10:38:15
25 Q. And what's the basis for that 10:38:18

1	A.	In the FTX multi-district	11:04:04
2		litigation I know class cert was granted.	11:04:09
3	Q.	Okay. Any others you can think	11:04:12
4		of?	11:04:14
5	A.	I believe it was granted in the	11:04:20
6		Harper versus O'Neal case as well, but I'm not	11:04:21
7		100 percent on that.	11:04:26
8	Q.	Okay. Anything else?	11:04:28
9	A.	The question was class cert in	11:04:37
10		crypto cases?	11:04:39
11	Q.	That's right.	11:04:41
12	A.	I believe there's a, yes, in the	11:04:44
13		Dapper Labs case, I believe class certification	11:04:51
14		was granted.	11:04:54
15	Q.	Okay.	11:04:58
16	A.	And there might be a Binance case	11:05:00
17		where class certification was granted, but I'm	11:05:05
18		not 100 percent on that.	11:05:07
19	Q.	Does your report in this case	11:05:09
20		refer to or rely on any of those cases that you	11:05:11
21		just mentioned?	11:05:14
22	A.	No.	11:05:24
23	Q.	Just a couple more questions and	11:05:24
24		we'll take a break.	11:05:26
25		Do you believe that you have	11:05:27

1	MR. ZACK: Was that a question or	11:24:21
2	a statement?	11:24:22
3	A. I have not reviewed that brief.	11:24:27
4	MR. BEST: Why don't you repeat	11:24:31
5	it, Dan, and say have you reviewed that brief,	11:24:33
6	so that it's clear.	11:24:34
7	MR. SACHS: That's what the record	11:24:34
8	says, but I'll repeat it.	11:24:35
9	Q. Have you reviewed the plaintiffs'	11:24:36
10	motion for class certification?	11:24:39
11	A. I believe it was sent to me and I	11:24:42
12	might have opened it and browsed it, but I	11:24:47
13	wouldn't say that I reviewed it.	11:24:51
14	Q. Did you have any role in drafting	11:24:52
15	it?	11:24:54
16	A. No.	11:24:54
17	Q. Do you believe that your report in	11:24:55
18	this matter supports plaintiffs' motion for	11:24:57
19	class certification in this case?	11:25:01
20	MR. ZACK: Objection to form.	11:25:04
21	A. Well, considering that I haven't	11:25:07
22	reviewed it, I'm not in a position to answer	11:25:08
23	affirmatively to that question.	11:25:13
24	Q. Okay. Do you believe that the	11:25:17
25	substance of your expert opinion touches on any	11:25:19

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1	A.	Yes.	11:44:06
2	Q.	Is that a statement of fact or	11:44:06
3		opinion?	11:44:09
4		MR. ZACK: Objection to form.	11:44:09
5	A.	The first sentence is certainly a	11:44:21
6		statement of fact, assuming that it's correct in	11:44:23
7		the Second Amended Complaint. And I believe	11:44:29
8		that's also the date that was in the CFTC	11:44:32
9		complaint.	11:44:35
10		I think the use of the word "akin"	11:44:37
11		in the second sentence is more suggestive of an	11:44:42
12		opinion, although I'll note that Voyager also	11:44:44
13		promoted EPAs as being similar to savings	11:44:47
14		accounts but with a higher rate of return.	11:44:52
15	Q.	Okay. Let's focus on the first	11:44:56
16		sentence then. What is the source of that fact?	11:44:58
17	A.	I believe I pulled this from the	11:45:04
18		Second Amended Complaint. It's either that or	11:45:09
19		the CFTC complaint.	11:45:13
20	Q.	So if there are sentences like	11:45:15
21		this one of fact in your report that don't have	11:45:17
22		citations, should we assume that they are coming	11:45:21
23		from the Second Amended Complaint or the CFTC	11:45:24
24		complaint?	11:45:28
25		MR. ZACK: Objection to form.	11:45:28

1	A.	I would not suggest that you	11:45:35
2		should assume that. But, largely, statement of	11:45:38
3		facts like this would have been informed by what	11:45:45
4		I read in the Second Amended Complaint and CFTC	11:45:47
5		complaint.	11:45:50
6	Q.	How is a reader of your report to	11:45:51
7		know the source of the statements of fact that	11:45:54
8		are in there?	11:45:57
9		MR. ZACK: Objection to form.	11:45:58
10	A.	I don't know.	11:46:02
11	Q.	I'm sorry, you said I don't know,	11:46:04
12		okay.	11:46:07
13		The second sentence includes,	11:46:08
14		"with Voyager paying interest in the form of the	11:46:14
15		crypto that customers held as principal."	11:46:17
16		Is that second part a statement of	11:46:20
17		fact or opinion?	11:46:22
18	A.	Well again, I would say that that	11:46:34
19		sentence was informed by what I read in the CFTC	11:46:35
20		complaint and the Second Amended Complaint. So,	11:46:39
21		taking those complaints as fact, then this	11:46:42
22		should be read as fact.	11:46:45
23	Q.	Okay. And are there other	11:46:47
24		sentences of fact in your report that come from	11:46:51
25		things other than the Second Amended Complaint,	11:46:55

1	the CFTC complaint or the other complaints that	11:46:57
2	you mentioned earlier?	11:47:02
3	MR. ZACK: I definitely object to	11:47:03
4	the form. You want him to read the whole report	11:47:05
5	while he answers that question?	11:47:07
6	MR. SACHS: If he's unable to	11:47:09
7	answer it, we can talk about it. Let's see what	11:47:10
8	he thinks.	11:47:13
9	A. Can you repeat the question.	11:47:15
10	MR. SACHS: Nancy, could you	11:47:15
11	please.	11:47:31
12	(Last question read.)	11:47:31
13	MR. ZACK: Object to the form	11:47:34
14	without him having the opportunity to read the	11:47:35
15	report.	11:47:39
16	A. I don't know.	11:47:40
17	Q. Can you think of any other sources	11:47:43
18	of fact that appear in your report other than	11:47:46
19	the complaints that we've discussed today?	11:47:50
20	MR. ZACK: Object to the form;	11:47:53
21	asked and answered.	11:47:55
22	A. I don't know.	11:48:09
23	MR. SACHS: Could we please pull	11:48:12
24	up exhibit, Tab 2X, I believe, which is the	11:48:14
25	plaintiffs' motion for class certification.	11:48:23

1 held and/or transferred additional funds to an 12:06:37
2 EPA and/or purchased, repurchased, invested, 12:06:40
3 and/or reinvested in VGX tokens." 12:06:43
4 Do you see that? 12:06:48
5 A. Yes. 12:06:48
6 Q. Have you reviewed this proposed 12:06:48
7 class definition before? 12:06:51
8 A. Again, I browsed it. I wouldn't 12:06:58
9 go so far as to say I reviewed it. 12:07:00
10 Q. Are you familiar with the concept 12:07:05
11 of a class definition? 12:07:07
12 A. Yes. 12:07:07
13 Q. Just at a high level, what do you 12:07:08
14 understand that to mean? 12:07:10
15 A. All members of the class would be 12:07:12
16 entitled to any damages. 12:07:14
17 Q. And this description of the 12:07:16
18 proposed class here, does your report express an 12:07:19
19 opinion that all of them can be treated in a 12:07:23
20 common way as to the question of whether the EPA 12:07:27
21 or VGX that they bought is a security? 12:07:30
22 MR. ZACK: Object to form. 12:07:34
23 A. My report doesn't specifically 12:07:43
24 comment on the proposed class, but given my 12:07:45
25 analysis of the VGX token and EPAs, I think you 12:07:50

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1	could infer that this is an appropriate class	12:07:54
2	definition.	12:07:58
3	Q. Okay, great. Let's now look back	12:07:59
4	at Exhibit 1, please.	12:08:04
5	And as you recall, the motion for	12:08:24
6	class certification, Exhibit 2, referenced	12:08:26
7	paragraphs 1.02 and 8.06. Do you remember that	12:08:29
8	discussion, Mr. Reiners?	12:08:43
9	A. Yes.	12:08:44
10	Q. I'm now pointing you to paragraph	12:08:45
11	8.06. Do you see 8.06 in front of you and can	12:08:48
12	you take a second to read it to yourself.	12:09:03
13	(Witness reviewing document.)	12:09:07
14	A. Yup.	12:09:13
15	Q. Is this one of the parts of your	12:09:14
16	report that you were thinking of when you	12:09:16
17	said -- sorry, I lost the realtime here -- is	12:09:31
18	this one of the parts of your report that you	12:09:42
19	were thinking of when you were referring to the	12:09:44
20	security class and how the definition of a	12:09:47
21	security applies to all of them equally?	12:09:52
22	MR. KAYE: Form.	12:09:56
23	A. I think this is part of the report	12:10:00
24	that would inform that definition.	12:10:02
25	Q. Okay. Do you see where it says,	12:10:06

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1	MR. ZACK: Objection, form.	13:25:49
2	A. I believe we discussed this prior	13:25:51
3	to lunch. My answer now would be the same, that	13:25:53
4	my report does not specifically address the	13:26:00
5	class cert issue.	13:26:05
6	I do believe that the facts and	13:26:07
7	analysis within my report are supportive of	13:26:10
8	plaintiffs' argument as highlighted on this page	13:26:17
9	here.	13:26:23
10	Q. Okay. Same question about the	13:26:23
11	second phrase here about does your report	13:26:25
12	reflect an opinion as to whether the issue of	13:26:28
13	whether EPAs and VGX are securities and whether	13:26:32
14	defendants' solicited their sales, whether that	13:26:37
15	issue would materially advance this litigation	13:26:41
16	for plaintiffs and the potentially millions of	13:26:45
17	affected consumers around the nation making	13:26:45
18	class treatment appropriate?	13:26:48
19	MR. ZACK: Object to form.	13:26:50
20	A. My report did not address the	13:26:52
21	solicitation point that you just raised. I	13:26:55
22	think my report does inform whether or not VGX	13:27:01
23	and EPAs are securities.	13:27:06
24	Q. And does your report reflect an	13:27:08
25	opinion about whether class treatment is	13:27:10

1	appropriate?	13:27:12
2	MR. ZACK: Object to form.	13:27:15
3	A. My report does not explicitly	13:27:17
4	state anything around class certification, but I	13:27:21
5	think, again, the facts and analysis in my	13:27:28
6	report have informed plaintiffs' lawyers as to	13:27:30
7	this motion for class certification.	13:27:36
8	Q. Do you see I've just highlighted a	13:28:16
9	sentence from Exhibit 2 that states,	13:28:19
10	"Irrespective of the individual issues which may	13:28:21
11	arise, the focus of the litigation concerns the	13:28:23
12	alleged common course of unfair conduct embodied	13:28:26
13	in Voyager's scheme to market and sell	13:28:30
14	unregistered securities"?	13:28:33
15	A. Yes.	13:28:36
16	Q. Does your report express an	13:28:36
17	opinion as to what the individual issues that	13:28:38
18	may arise or what the focus of the litigation	13:28:40
19	concerns?	13:28:43
20	MR. ZACK: Object to form.	13:28:44
21	A. My report was merely focused on	13:28:52
22	EPAs and VGX and whether or not they share	13:28:57
23	characteristics of notes and/or investment	13:29:01
24	contracts. I think that is the only issue that	13:29:06
25	my report explicitly expresses a view on.	13:29:09